

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NOS. INU-03-4 WRU-03-61
---------------------------------	-----------------------------------

**ORDER INITIATING FORMAL NOTICE AND COMMENT PROCEEDING,
REQUIRING NOTICE TO PERSONS IDENTIFIED AS COMPETITORS, AND
WAIVING THE SPECIFIED TIME FOR COUNTERSTATEMENTS IN 199 IAC 5.4(2)**

(Issued September 26, 2003)

On July 2, 2003, Qwest Corporation (Qwest) filed a petition for determination of effective competition and deregulation pursuant to Iowa Code § 476.1D (2003). Qwest asks the Board to determine that its existing retail local exchange services in 37 of its 124 Iowa exchanges are subject to effective competition and should be deregulated. The exchanges include: Council Bluffs, Crescent, Sioux City, Whiting, Alta, Arnolds Park, Estherville, Lake Park, Laurens, Milford, Sioux Rapids, Spencer, Spirit Lake, Storm Lake, Calmar, Decorah, Clinton, Davenport, Muscatine, Cedar Rapids, Iowa City, Mount Vernon, Adel, Altoona, Ankeny, Carlisle, Dallas Center, Dawson, Des Moines, Granger, Grimes, Indianola, Norwalk, Polk City, Perry, Runnells, and Waukee.

If the Board grants that request and deregulates Qwest's retail local exchange services in the identified exchanges, Qwest requests a determination by the Board that a deregulation accounting plan is not required of Qwest because its rates are

presently regulated pursuant to a Board-approved price plan and are not subject to rate of return regulation.

In support of its petition, Qwest states that in each of the identified exchanges at least one competitive local exchange carrier (CLEC) has received a certificate of public convenience and necessity pursuant to Iowa Code § 476.29 to permit the CLEC to offer competitive local exchange services in the exchange. Qwest alleges that these CLECs have acquired a substantial percentage of the local exchange service provided in each exchange. In addition, Qwest alleges that other competitive factors are applicable to all its exchanges, including wireless telephone service, cable modems for high speed data transmission, and the use of Voice Over Internet Protocol (VoIP) to enable a customer to utilize a broadband connection to originate and receive voice telephone calls, completely bypassing Qwest's network.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the petition on July 22, 2003, asking the Board to docket Qwest's petition as a contested case proceeding and to establish a procedural schedule. On August 4, 2003, MCI, Inc. (MCI), filed an intervention request, objection to Qwest's petition, and a request that the petition be dismissed. Alternatively, MCI requested that Qwest be required to provide a more definite statement and that MCI and other interested parties be given an additional opportunity to respond pursuant to a procedural schedule established by the Board. AT&T Corp. and AT&T Communications of the Midwest, Inc. (AT&T), filed a letter on

August 4, 2003, indicating that it has an interest in the proceeding and asking to reserve its right to intervene.

In an order dated August 7, 2003, the Board described the criteria to be used in determining whether a service is subject to effective competition, pursuant to 199 IAC 5.6(1).¹ At that time, the Board found that the petition did not provide sufficient data to support a *prima facie* finding of effective competition.

On August 15, 2003, Qwest filed a supplement to its petition consisting of "a listing of the retail local exchange offerings of services and facilities and the rates thereof." Qwest noted that its supplemental filing was "obtained from tariffs on file with, and approved by, this Board."²

The Board notes that Qwest did not provide any analysis as to whether these CLECs provide services that are similar to the services offered by Qwest. Qwest has not filed any evidence to support a conclusion that market forces in the identified exchanges are sufficient to assure just and reasonable rates absent regulation. Qwest's filings leave many relevant questions unanswered: How many of the CLECs are facilities-based? How many are really trying to serve mass markets, as opposed to niche markets? What choices do the majority of Qwest's customers really have? These and other questions appear to require some sort of economic evidence if the Board is to make a determination of "whether market forces [in the identified

¹ See, Order Accepting Filing, Docket No. INU-03-4, pp. 2-3.

² See, Supplement to Petition for Deregulation, filed August 15, 2003, pg. 2.

exchanges] are sufficient to assure just and reasonable rates without regulation," as required by Iowa Code § 476.1D.

The Board recognizes that there may be discovery constraints that make it difficult for Qwest to provide specific information related to its competitors. However, there are other types of evidence to which Qwest should have access in its own records and which would tend to prove or disprove the existence of sufficient market forces, including:

- Data from Qwest on the numbers of Interconnection Agreements completed or requested that are pointed at the 37 exchange areas and trends in those numbers.
- Numbers of carriers actually providing service in the 37 exchanges by unbundled network elements (UNEs) or resale.
- Number of lost access lines in each of exchanges and how this correlates to competitors that are using facilities, resale or UNEs.
- Number of telephone numbers ported, in which exchange and to which competitor.
- Examples or other indicative factors that cable providers using VOIP are actually affecting Qwest line counts in any of the 37 exchanges.
- Examples of wireless replacing wireline phone service. Is Qwest proposing that with lack of E911, local number portability, wireless pricing, and service quality that wireless is effective competition? What are the numbers of customers estimated lost to wireless?
- Qwest's arguments on effective competition could be separated not only by service areas, but also business vs. residential.
- A better comparison on how its broad array of services and corresponding rates matches up to the competitors that they cite. Are the competitors niche players or do they offer the same array of services?

Qwest's filings in this docket to date appear to be insufficient to support a finding of effective competition in the identified exchanges. The existing evidence appears to be sufficient to support a finding that a comparable service or facility may be available from a supplier other than Qwest in each exchange, but there appears to be insufficient evidence to support a finding regarding adequacy of market forces. On this basis, the Board could once again decline to docket this proceeding and require that Qwest file additional supporting information.

Instead, however, the Board will docket Qwest's petition and allow Qwest an opportunity to file additional supporting information as a part of its written statement of position. The issues raised in Qwest's petition are important and the Board will consider them without further delay. Pursuant to Iowa Code § 476.1D and 199 IAC 5.3(1), the Board will initiate a formal notice and comment proceeding, identified as Docket No. INU-03-4, to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in subrule 5.6(1) to the identified services. Participants in this docket will be permitted to file sworn statements of position and counterstatements, pursuant to 199 IAC 5.4. An oral presentation, at which all participants will be permitted to cross-examine other participants' witnesses, will be held pursuant to rules 5.3(4) and 5.5. Because this is a notice and comment proceeding, it is unnecessary for interested persons to file petitions to intervene in

order to participate; instead, they may express their intent to participate by filing a statement or counterstatement of position. However, all participants must understand that the Board's discovery rules are in full force and effect in this proceeding.

The Board's rules require that upon docketing a petition for deregulation of a telecommunications service or facility, the Board will cause notice of the proceeding to be published in the Iowa Administrative Bulletin and the Board may require specific notice to persons identified as competitors.³ The Board will require Qwest to mail a copy of its petition and this order on each carrier identified by Qwest as a competitor in one or more of the identified exchanges and on all interexchange carriers that purchased any access services in any of the identified exchanges within the past year.

Finally, the Board notes that its procedural rules for deregulation dockets require that counterstatements of position must normally be filed 15 days after the initial statements. 199 IAC 5.4(2). Because of the timing of this petition, application of that rule would mean that counterstatements would be due on December 1, 2003, and the preparation of those counterstatements would have to take place over the Thanksgiving holiday. This could be an impediment to the creation of an adequate record, especially since much of Qwest's initial information will not be filed until November 14, 2003. Accordingly, the Board will, on its own motion, waive

³ 199 IAC 5.3(3).

199 IAC 5.4(2) and extend the time frame for submission of counterstatements to December 15, 2003, in order to permit full exploration of the issues.

In waiving this rule, the Board has considered the factors of its waiver rule, 199 IAC 1.3, and finds that the application of the 15-day rule would pose an undue hardship on those parties intending to respond to the initial statements filed in this docket because it would not allow them adequate time to review the initial statements, conduct discovery, and prepare and file counterstatements. The waiver will not prejudice the substantial legal rights of any person because all interested persons will receive the same extension of time to prepare counterstatements. The provisions of the rule are not specifically mandated by statute or another provision of law, and substantially equal protection of public health, safety, and welfare will be afforded by the extended time for filing counterstatements.

IT IS THEREFORE ORDERED:

1. A formal notice and comment proceeding identified as Docket No. INU-03-4 is initiated to determine whether the telecommunications services offered within the exchanges identified in the Qwest petition are subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D (2003).
2. The Executive Secretary of the Board is directed to cause notice of the docketing of these proceedings to be published in the Iowa Administrative Bulletin.
3. Within 14 days of the date of this order, Qwest shall mail a copy of its petition and a copy of this order to each carrier identified by Qwest as a competitor in one or more of the identified exchanges and to all interexchange carriers that

purchased any access services in any of the identified exchanges within the past year. Qwest shall file a certificate of mailing, identifying the carriers, within 21 days after the date of this order.

4. The following procedural schedule is established:

a. Any interested person may file, on or before November 14, 2003, a statement of position concerning deregulation of the listed services.

Statements of position must substantially comply with 199 IAC 2.2(2). Ten copies must be filed with the original.

b. Any interested person may file a counterstatement replying to the comments of other participants no later than December 15, 2003. Ten copies must be filed with the original and copies must be served upon all participants filing statements to which the counterstatement responds. Counterstatements must substantially comply with 199 IAC 2.2(3).

c. All statements and counterstatements shall be sworn and directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

d. An oral presentation is scheduled for the purpose of taking sworn testimony concerning the statements and counterstatements. The oral presentation shall commence on January 21, 2004, beginning at 10 a.m. in the Board's hearing room at 350 Maple Street, Des Moines, Iowa, and will continue on January 22, 2004, if necessary. All persons filing written statements shall have at least one witness at the oral presentation available to

be cross-examined by other persons and by the Board on the subject matter of the written statement. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

5. The provision of 199 IAC 5.4(2) establishing a 15-day time frame for the filing counterstatements is waived, on the Board's own motion, to permit a full investigation of the issues presented by the petition.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of September, 2003.

UTILITIES DIVISION

Notice of Formal Notice and Comment Proceeding

The Iowa Utilities Board (Board) hereby gives notice, pursuant to 199 IAC 5.3(3), that on July 2, 2003, Qwest Corporation (Qwest), filed a petition for determination of effective competition and deregulation pursuant to Iowa Code § 476.1D (2003).

Qwest asks the Board to determine that its existing retail local exchange services in 37 of its 124 Iowa exchanges are subject to effective competition and should be deregulated. The exchanges include: Council Bluffs, Crescent, Sioux City, Whiting, Alta, Arnolds Park, Estherville, Lake Park, Laurens, Milford, Sioux Rapids, Spencer, Spirit Lake, Storm Lake, Calmar, Decorah, Clinton, Davenport, Muscatine, Cedar Rapids, Iowa City, Mount Vernon, Adel, Altoona, Ankeny, Carlisle, Dallas Center, Dawson, Des Moines, Granger, Grimes, Indianola, Norwalk, Polk City, Perry, Runnells, and Waukee.

If the Board grants that request and deregulates Qwest's retail local exchange services in the identified exchanges, Qwest requests a determination by the Board that a deregulation accounting plan is not required of Qwest because its rates are presently regulated pursuant to a Board approved price plan and is not subject to rate of return regulation.

In support of its petition, Qwest states that in each of the identified exchanges at least one competitive local exchange carrier (CLEC) has applied for, and received, a certificate of public convenience and necessity to permit the CLEC to offer

competitive telecommunications services in the exchange. Qwest alleges that these CLECs have acquired a substantial percentage of the local exchange service provided in each exchange. In addition, Qwest alleges that other competitive factors are applicable to all its exchanges, including wireless telephone service, cable modems for high speed data transmission, and the use of Voice Over Internet Protocol (VoIP) enabling a customer to utilize a broadband connection to originate and receive voice telephone calls, completely bypassing Qwest's network.

Responses to Qwest's petition were filed, raising various issues regarding the petition, including a request that the Board docket the petition as a contested case. However, 199 IAC 5.3(1) sets forth the manner to be used to process such a request. Pursuant to 199 IAC 5.3(1), the Board has, therefore, initiated a formal notice and comment proceeding, identified as Docket No. INU-03-4, to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in subrule 5.6(1) to the identified services. Participants in the docket will be permitted to file sworn statements of position by November 14, 2003, and counterstatements by December 15, 2003. An oral presentation, at which all participants will be permitted to cross-examine other participants, will commence on January 21, 2004. Further details may be obtained from the Board's order, available on the Board's Web site at www.state.ia.us/iub.

September 26, 2003

/s/ Diane Munns
Diane Munns
Chair